

Before the  
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Washington, D.C. 20540

GENERAL COUNSEL  
OF COPYRIGHT  
JAN 3 1997

RECEIVED

In re: Determination of Statutory	)	
License Terms and Rates for Certain	)	No. 96-5
Digital Subscription Transmissions	)	CARP DSTR
of Sound Recordings	)	

**SUPPLEMENTAL OPPOSITION OF DIGITAL CABLE RADIO ASSOCIATES  
TO THE MOTION OF THE RECORDING INDUSTRY ASSOCIATION  
TO COMPEL SERVICES TO PRODUCE IMMEDIATELY ALL DOCUMENTS  
UPON WHICH THEIR WITNESSES RELIED AND TO PRECLUDE TESTIMONY  
REGARDING REQUESTED DOCUMENTS NOT PRODUCED**

Digital Cable Radio Associates ("DCR"), by its attorneys and pursuant to 17 U.S.C. § 801(c) and to Section 251.45 of the Rules of the Copyright Office, 37 C.F.R. § 251.45, and the Copyright Office's Order of November 27, 1996 ("the Order"), hereby opposes the above-captioned motion of the Recording Industry Association of America ("RIAA").

The RIAA's motion to compel ("Motion") requests that DCR produce all documents responsive to the RIAA's discovery requests and state that all such documents have been produced. DCR has produced all documents relied upon directly by its witnesses with respect to any and all specific testimony that has been the subject of a request by the RIAA for documentary discovery.<sup>1/</sup> DCR has confirmed to the RIAA that all documents produced

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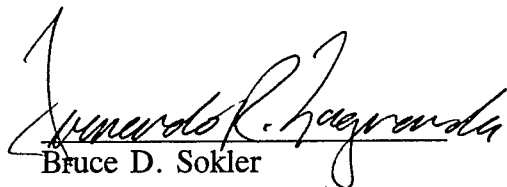
<sup>1/</sup> See Letter of Fernando R. Laguarda to Steven M. Marks dated December 13, 1996, producing documents of Digital Cable Radio Associates, attached hereto at Ref. No. 1. See also Fernando R. Laguarda to Steven M. Marks dated December 13, 1996, producing documents of John R. Woodbury, Ph.D., attached to the RIAA Motion at Tab J.

have been identified by specification in response to the RIAA's request to do so.<sup>2/</sup>

Accordingly, there is no basis for the instant Motion.

Moreover, the RIAA's request for an order limiting DCR from presenting direct testimony regarding or relying upon documents that have been requested but not produced is illogical. The RIAA is already in possession of the documents it has requested. Any decision as to the admissibility of additional evidence, of any type, should be reserved to the discretion of the CARP. As a result, the instant motion should be **DISMISSED**.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Bruce D. Sokler", is written over the printed name.

Bruce D. Sokler  
Fernando R. Laguarda  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY and POPEO, P.C.  
701 Pennsylvania Ave., N.W.  
Suite 900  
Washington, D.C. 20004  
(202) 434-7300

Dated: January 7, 1997

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<sup>2/</sup> See Letters of Steven M. Marks and Fernando R. Laguarda attached hereto at Ref. No. 2.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Fernando R. Laguarda

Direct Dial Number  
(202) 434-7347

December 13, 1996

BY HAND

Steven M. Marks  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, DC 20004-1206

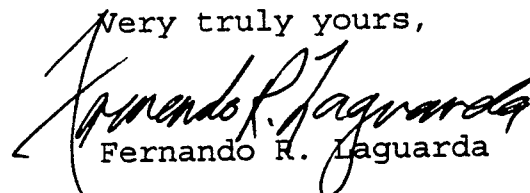
Re: Docket No. 96-5 CARP DSTR

Dear Steve:

Pursuant to Digital Cable Radio Associates' ("DCR") response and objections of October 10, 1996, enclosed please find documents in response to the Recording Industry Association of America's request, and three computer discs containing the available backup data for the surveys included in DCR's direct case. The documents are numbered DCR0000001 through DCR0001216. Also enclosed is an affiliation agreement code list to allow you to identify redacted DCR affiliation agreements. DCR reserves the right to amend its response and/or produce additional documents should the need arise.

Do not hesitate to contact me if you have any questions about the foregoing.

Very truly yours,

  
Fernando R. Laguarda

Enclosure

DIGITAL CABLE RADIO ASSOCIATES, L.P.  
("MUSIC CHOICE")

AFFILIATION AGREEMENT CODE

Adelphia Communications, Fairbanks Comm-Leadership Cable (I1)	Co. I
Cablevision Industries	Co. A
Cablevision Systems	Co. B
Century Communications	Co. O
Comcast Corporation	Co. C
Continental Cablevision, N-Com Holding (D1), Pompano Beach (D2)	Co. D
Cox Communications & Times Mirror	Co. G
Hughes Direct Satellite (Direct TV)	Co. BB
Sammons Communications	Co. M
Susquehanna Cable Company	Co. R

ARNOLD & PORTER

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FACSIMILE: (202) 942-5999

December 19, 1996

STEVEN M. MARKS  
(202) 942-5104

NEW YORK  
DENVER  
LOS ANGELES  
LONDON

By Facsimile

Fernando R. Laguarda  
Mintz, Levin, Cohn, Ferris  
Glovsky and Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Re: Docket No. 96-5 CARP DSTR

Dear Fernando:

I write to confirm our understanding about DCR's production of documents.

First, you have matched all the documents produced by DCR with the request to which it is responsive. The documents you produced are responsive only to those requests you specified in your letter of December 16, 1996.

Second, although there may be additional materials with which DCR's witnesses are generally familiar or that comprise their general knowledge, those materials were not specifically relied upon when the witness prepared his testimony (i.e., the witness did not consult or refer to the materials at the time the testimony was prepared).

Third, DCR has produced all surveys, studies, reports or research that its witnesses relied upon.

If this letter does not accurately reflect our understanding, please call me as soon as possible.

Very truly yours,



Steven M. Marks

MINTZ LEVIN  
COHN FERRIS  
GLOVSKY AND  
POPEO PC

*Boston*

*Washington*

*Fernando R. Laguarda*

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December 20, 1996

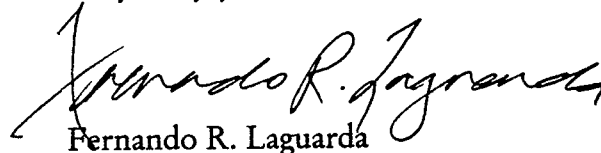
Steven M. Marks, Esq.  
Arnold & Porter  
555 Twelfth Street, N.W.  
Washington, D.C. 20004

Re: Docket No. 96-5 CARP DSTRA

Dear Steve:

I am in receipt of your letter of December 19 with respect to document production by Digital Cable Radio Associates ("DCR") in the above-captioned proceeding. As we discussed, I have identified by specification all documents produced by DCR in response to your request of October 3, 1996 ("Request"). There are no other documents to which DCR's witnesses referred directly in testifying with respect to the statements identified in the Request. However, DCR continues to reserve its witnesses' right to testify on any subject on which they are generally knowledgeable. Please do not hesitate to call me if you have any questions about the foregoing.

Very truly yours,



Fernando R. Laguarda

FRL:fri